

Longshore and Harbor Workers' Compensation

Longshore and Harbor Workers' Compensation Act (LHWCA) (33 USC § 901 *et seq.*; 20 CFR Parts 701-704)

Who is Covered

The Longshore and Harbor Workers' Compensation Act (LHWCA) provides for compensation and medical care to employees disabled from injuries that occur on the navigable waters of the United States, or in adjoining areas used in loading, unloading, repairing, or building a vessel. The Act also offers benefits to dependents if the injury causes the employee's death. The term "injury" includes occupational disease arising out of employment.

The Act covers workers employed in maritime occupations, including longshore workers or other persons in longshore operations, and any harbor workers, including ship repairers, shipbuilders, and shipbreakers. The Act excludes the following individuals if they are covered by a state workers' compensation law: office employees, certain retail and service employees, small vessel workers and individuals engaged in repairing certain recreational vessels, and masters or members of a crew of any vessel.

Employers of covered employees are responsible for insuring the payment of compensation and medical benefits to injured employees. Private insurance carriers or employers who are authorized by the Department of Labor (DOL) to become self-insured provide this insurance. While a Special Fund administered by the Department of Labor may pay benefits in certain circumstances, authorized insurance carriers and self-insured employers fund most benefits under the LHWCA. ESA's Office of Workers' Compensation Programs (OWCP) administers the Act.

In addition to longshore and other maritime workers, the LHWCA covers a variety of other employees through several extensions to the Act. The District of Columbia Workmen's Compensation Act (enacted in 1928 and repealed effective July 26, 1982) provides benefits for employees in private employment in the District of Columbia who sustained injuries or illnesses as a result of employment prior to July 26, 1982. (Workers injured after this date are provided for under a workers' compensation act administered by the District of Columbia Government.)

Also, the Defense Base Act (1941) covers employees of U.S. contractors outside the continental United States, Alaska and Hawaii, while the Nonappropriated Fund Instrumentalities Act (1952) provides for benefits for civilian employees of post

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exchanges, service clubs, etc. of the Armed Forces. The Outer Continental Shelf Lands Act (1953) provides coverage to employees of private industry conducting certain operations on the Outer Continental Shelf of the United States.

Basic Provisions/Requirements

An injured employee is eligible to receive compensation for disability at the rate of 66 2/3 percent of the employee's average weekly wage, subject to the specified maximum in effect at the time of injury, for as long as the effects of the injury continue. Compensation is also available for permanent impairment of specified limbs and organs and to replace loss of earning capacity.

Benefits are paid to a widow or widower, or other eligible survivors, at the rate of 50 percent of the national average weekly wage as determined by Secretary of Labor, applicable at the time of injury, or the employee's full wage, if less.

The maximum compensation rate is 200 percent of the current national average weekly wage as determined by Secretary of Labor, applicable at the time of injury, or the employee's full average weekly wage, whichever is less. Current benefit levels are found at www.dol.gov/esa/owcp/dlhwc/nawwinfo.htm.

Within 10 days from the date of an employee's injury or death, or 10 days from the date an employer has knowledge of an employee's injury or death, including any disease or death proximately caused by the employment, the employer must furnish a report to the district director for the compensation district in which the injury or death occurred, and thereafter furnish additional or supplemental reports as the district director may request.

No report is to be filed unless the injury causes the employee to lose one or more shifts from work. However, the employer must keep records containing the following information: (1) the name, address, and occupation of the employer; (2) the name, address, and occupation of the employee; (3) the cause, nature, and other relevant circumstances of the injury or death; (4) the year, month, day, and hour when, and the particular locality where, the injury or death occurred; and (5) such other information as OWCP may require.

Every employer shall maintain adequate records of injuries sustained by employees, including information on the disease, other impairments or disabilities, or death relating to the injury. Employers must make such records available for inspection by OWCP or by any state authority, and they should retain records for three years after the date of injury.

Employers must secure insurance for workers' compensation coverage under the Act, either through an authorized insurance carrier or by obtaining approval to self-insure from OWCP. To self-insure, the employer must furnish OWCP with proof of his or her ability to pay compensation directly and deposit security in the form of an indemnity bond or negotiable securities.

Once insurance has been obtained, the employer may request a certificate from the district director in the compensation district where he or she has operations, showing that payment of compensation has been secured. Only one certificate will be issued to an employer in a compensation district, and it will be valid only during the period for which the employer has secured such payment.

When an employer obtains insurance through a private insurance carrier, the employer's obligation to pay monetary benefits and provide medical benefits is binding on the insurance carrier.

The employer or insurance carrier must pay compensation payments periodically, promptly, and directly to the person entitled to benefits under the Act.

An employer may apply to OWCP for an exemption to coverage by certifying a particular facility as one engaging in building, repairing, or dismantling of small vessels exclusively and not receiving a federal maritime subsidy. (Small vessels are defined as commercial barges that are under 900 lightship displacement tons (long) or a commercial tugboat, towboat, crewboat, supply boat, fishing vessel, or other work vessel that is under 1,600 tons gross.)

Once a facility is certified, injuries sustained there would not be covered under the Act except for injuries which occur over the navigable waters of the United States, including any adjoining pier, wharf, dock, or facility over the land for launching vessels. A facility otherwise covered under the Act remains covered until certification of exemption is issued. This exemption from coverage is not intended for use by employers whose facilities are used exclusively to work on small vessels.

The Special Fund was established so that, under certain circumstances, the employer's liability is limited if an employee has a pre-existing permanent partial disability. In these cases, benefits are paid from the Special Fund after 104 weeks. For OWCP to make this determination, the employer must request limitation of its liability and file a fully documented application with OWCP as soon as the claimant's condition becomes known or is an issue in dispute.

An employer may not discharge or in any manner discriminate against an employee because he or she has claimed or attempted to claim compensation, or has participated in a proceeding under this Act. This prohibition does not prevent discharge of or refusal to employ a person who has been found to have filed a fraudulent claim for compensation or who has otherwise made a false statement or misrepresentation.

Employee Rights


If an employee or his or her survivor(s), or an employer or insurance carrier, disagrees with a recommendation of OWCP, a formal hearing may be requested before an administrative law judge. The administrative law judge's decision may in turn be appealed to the Benefits Review Board. Appeal from the Benefits Review Board's decision may be taken to the U.S. Court of Appeals and finally to the U.S. Supreme Court.

Compliance Assistance Available

To obtain additional information, contact the nearest Division of Longshore and Harbor Workers' Compensation office (www.dol.gov/esa/owcp/dlhwc/lstcontac.htm). Further compliance assistance can be obtained from OWCP's DLHWC (Longshore) Web site (www.dol.gov/esa/owcp/dlhwc/lstable.htm) or by contacting DOL's Toll-Free Help Line at 1-866-4-USA-DOL.

Penalties/Sanctions

If any installment of compensation payable without an award is not paid within 14 days after it becomes due, an additional 10 percent will be added to the unpaid installment. OWCP can waive the additional 10 percent payment if the employer contacts OWCP and explains why the installment payment was late. The employer must also contact OWCP whenever it begins or suspends payments.



OWCP may suspend or revoke the authorization of any self-insurer. Failure by a self-insurer to comply with any provision or requirement of law or regulations, failure or insolvency of the surety on his or her indemnity bond, or impairment of financial responsibility are deemed good causes for suspension or revocation.

Any employer who fails to secure coverage by authorized insurance carriers or by becoming an authorized self-insurer is subject, upon conviction, to a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

Any employer who discriminates against an employee may be subject to a penalty of not less than \$1,000 or more than \$5,000, and may be required to restore that employee to his or her employment along with all wages lost due to the discrimination unless that employee is no longer qualified to perform the duties of the employment.

Relation to State, Local, and Other Federal Laws

Compensation benefits received under other state or federal compensation laws for the same injury are offset against benefits paid under the Act.